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In re Application of:
HUDGEONS, Brandon, et al. :
U.S. Application No.: 10/516,724 :
PCT No.: PCT/US03/13745 :
International Filing Date: 01 May 2003 :
Priority Date: 01 May 2002 :
Attorney's Docket No.: 1590.00002 :
For: INTERACTIVE MULTI-MEDIA SYSTEM :

DECISION ON PETITION
FOR REVIVAL UNDER
37 CFR 1.137(b)

This decision is issued in response to applicant's Petition for Revival under 37 CFR 1.137(b), filed 02 December 2004.

BACKGROUND

On 01 May 2003, applicants filed international application PCT/US03/13745 which claimed a priority date of 01 May 2002 and designated the United States. The deadline for filing the basic national fee was thirty months from the priority date, that is, 01 November 2004.

On 02 December 2004, applicant filed the present petition for revival under 37 CFR 1.137(b), accompanied by, among other materials, a transmittal letter requesting entry into the national phase for international application PCT/US03/13745.

DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c). Applicant here has failed to satisfy items (1) and (2).

Regarding item (1), the "required reply," section 711.03(c) of the Manual of Patent Examining Procedures states that:

[g]enerally, the required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed.

Here, the "required reply" was payment of the basic national fee for entry into the national stage. The present petition included the authorization to charge Deposit Account No. 50-1259 the required fees, including the small entity basic national fee. However, when the USPTO attempted to charge the Deposit Account for the required fees, the Deposit Account had insufficient funds. Accordingly, the Deposit Account authorization cannot be treated as a payment for the required fees. Because the "required reply" has not been submitted, item (1) is not satisfied.

Similarly, with respect to item (2), the authorization to charge Deposit Account No. 50-1259 for the petition fee was insufficient in that the Deposit Account did not contain sufficient funds.

CONCLUSION

Applicants' petition or revival under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should be entitled "Renewed Petition Under 37 CFR 1.137(b)" and include the materials required to satisfy items (1) and (2) above, that is, payment of the applicable basic national fee and petition fee.

Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration



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